IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : August 08, 2006

Rishipal

....Appellant

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : Mr. H.S.Jaswal, Advocate for the appellant
Mr. Sunil Katyal, DAG Haryana

Virender Singh, J.

In the case in hand a young child of about 5/6 years, daughter of Dil Chand PW1 (the father) and Smt. Vidya PW2 (the mother) resident of village Dulyani had fallen a prey at the hands of the appellant. She was allegedly raped by him on the night intervening 22/23/.6.1996 in the area of village Dulyani and thereafter killed her and threw her body in sugarcane fields. He was consequently charged under section 376 and 302 IPC and vide impugned judgment stands convicted and sentenced to undergo

imprisonment for life and to pay a fine of Rs 10,000/- under section 376 IPC, in default of payment of fine to further undergo imprisonment for three years. Under section 302 IPC also he was sentenced in the same manner. Out of the recovered amount of fine a sum of Rs 15,000/- has been ordered to be paid to the parents of the victim as compensation.

Brief facts of the prosecution case are as under:-

Dil Chand PW1 along with Sumer Chand, Ex-sarpanch of village Dulyani went to Police Station on 23.6.1996 and made a statement that he is resident of Bihar. About 20 days before the occurrence, he along with his family had come to Jagir Singh son of Chanchal Singh for planting the paddy crops and started residing at the tubewell of Jagir Singh. He has four children, two sons and two daughters. His daughter allegedly raped and murdered was of the age of 5/6 years at the time of occurrence. It is then alleged that on 22.9.96 after finishing his work, he along with his children came to the Kotha of Jagir Singh at 7.00 PM and after taking the meals, were relaxing when at about 8.30 PM, a young boy came there and demanded a tumbler for taking liquor. He refused to give him the same. He, however, took up the same which was lying outside the Kotha and started consuming liquor. The complainant asked his name who disclosed himself as Rishi Pal Balmiki resident of Sangroli (appellant herein). It is then alleged that his wife and children had retired on a Palli (sheet made of gunny bags) whereas he (complainant) remained sitting there. The

appellant forcibly made him to take liquor and after some time he started feeling sleepy. He slept on the Palli whereas appellant continued consuming liquor. The appellant was wearing a green colour pant of linear design and white shirt having green strips. Besides this he was wearing a red and white chequered design parna (head gear). It is then alleged that at about 2.00 AM at night his wife and one Raju son of Siri Chand from their brotherhood woke him up. His wife told him that when he (Dil Chand) was sleeping, the appellant started threatening her while consuming liquor and she feeling scared, went to the tubewell Kotha of Pala son of Rakam Singh Gujjar resident of Dulyani along with her children as one Raju son of Siri Chand who belongs to their community was residing there along with his children. She further disclosed that at that time Reena was sleeping on the Palli near the complainant and presuming that the appellant might have left the place after consuming liquor she along with Raju returned to the Kotha and did not find her daughter sleeping on the Palli. It is then alleged that the complainant and Raju searched for the girl here and there and in the morning at about 7.00 AM, Parna of the appellant, floral design terricot salwar of her daughter were found lying in the sugarcane field of aforesaid Jagir Singh. Stark naked dead body of her daughter (Reena) was found in the dry water outlet adjoining the road situated near the standing sugarcane crop. Blood had oozed out from her nose and vagina. It is then alleged that he collected the members of his biradari (brother-hood) and

approached the police. On the basis of the aforesaid allegations, the present case was registered under sections 376 and 302 IPC.

SI Chander Singh (SHO, Police Station Pundri) PW13 after recording the statement of Dil Chand sent the special report to the Ilaqa Magistrate and thereafter reached the spot. Certain photos of the dead body were got clicked; inquest report and rough site plan was prepared at the spot. Thereafter dead body of the girl was sent for post-mortem examination. Checkdar parna and terricot salwar were also taken into possession from the sugarcane field of Jagir Singh. Blood stained earth, grass and mould were lifted from the spot. All these articles were put into sealed parcels which were attested by the PWs. He recorded the statement of Vidya Devi wife of the complainant, Bajinder Singh, Raju, Sumer Chand Ex-sarpanch and Jagir Singh. Thereafter the appellant was arrested and got medically examined. On 24.6.1996, the appellant was interrogated. He suffered a disclosure statement to the effect that the clothes which he was wearing at the time of occurrence had been kept concealed by him in the sugarcane field of Hukam Chand. On 25.6.1996, he led the police party and got recovered pant Ex. P3, white shirt Ex. P2 which were also sealed into parcel. After the completion of the investigation, the appellant was challaned. He was charged under sections 376 and 302 IPC.

The prosecution has examined as many as 14 witnesses in support of its case. The main witnesses are PW1 Dil Chand, the father of

the girl who has reiterated his statement which is the basis of lodging of the FIR.

Smt. Vidya PW2 the mother of the prosecutrix-deceased has also corroborated the statement of her husband Dil Chand.

PW4 is Raju son of Siri Chand who also corroborates the statement of Smt. Vidya. He had also accompanied Dil Chand while searching for the girl.

Dr. S.S. Dahiya, PW6 had medico legally examined the appellant on 23.6.1996 at 10.55 PM and found that there was abrasion on his lower abdominal wall about 5 cms above the pubic hair. Another abrasion was found on the left side of the groin. Blood clot were also present there. The penis was well developed and there was a laceration over the franulum. Blood clot were also present there. Pubic hair were also put into a sealed parcel for examination of spermatozoa. According to his opinion, there was nothing to suggest that the appellant was not capable of doing sexual intercourse. He also took into possession under wear of the appellant for the examination of presence of spermatozoa.

PW7 is Dr. Jasmer Singh who had conducted the autopsy on the dead body of girl, noticed that blood had come out from mouth and nostril. There were multiple abrasion and contusion of irregular shape of various sizes on the anterio lateral aspect of both thigh near the groin region. There was fracture and dislocation of second and third cervical, vertibrae

and underneath spinal cord was also injured. Labia majora was swollen. There was extensive tear/laceration on vagina which extended underneath and rectal region. Faecal matter was also present in vagina. There was communication between vagina, rectum and bladder as a result of injuries. According to his opinion the cause of death was due to shock and asphyxia as a result of injuries which were ante mortem in nature and sufficient to cause death in normal course of nature.

PW13 is SI Chander Singh is the Investigating Officer of this case. The investigation conducted by him has already been eluded to in the preceding paras.

Ex. P4, P4/1 and P4/2 are the reports of Forensic Science Laboratory.

We do not feel the necessity of discussing the evidence of other witnesses as the same is not necessary for the purpose of decision of the instant appeal.

The stand taken up by the appellant as it emerges from his statement recorded under section 313 of the Code of Criminal Procedure is of false implication. The plea taken by him is that he has been implicated on suspicion and in fact his wife had moved an application against him. Thereafter he was taken to Police Station where he was tortured and certain injuries were caused on his private parts and thereafter challaned in this case.

In defence the appellant has produced DW1 Hukam Singh son of Lal Singh and DW2 Ram Pal son of Hukam Singh to show that on 23.6.1996, police had apprehended him from their fields at 10.00 AM on the ground that he was wanted in the Police Station as some application had been moved by his wife. The aforesaid witnesses further stated that during the night intervening 22/23.6.1996, the appellant was in their fields and was digging the tubewell pit. He remained throughout the night at the said place and did not go any where.

After appreciating the entire evidence, the trial court convicted and sentenced the appellant under sections 376/302 IPC. Hence, this appeal.

We have heard Mr. H.S.Jaswal, learned counsel for the appellant and Mr. Sunil Katyal, learned Deputy Advocate General, Haryana. With their assistance, we have also gone through the entire record.

Mr. Jaswal submits that the prosecution has not been able to prove its case beyond doubt and the appellant has been involved in this case merely on suspicion. Dwelling upon his arguments, Mr. Jaswal submits that the case of Dil Chand and his wife is that PW4 Raju son of Siri Chand had also come to the Kotha of Dil Chand along with Vidya where they saw that the girl was not sleeping by the side of Dil Chand and thereafter Dil Chand, his wife and aforesaid Raju started searching for the girl. But when Raju stepped into witness box, he stated that when the girl

was not found after about one hour of search, they noticed one person wearing white shirt and green strip pant running from the sugarcane field. He was asked to stop but he did not stop and ran towards village Sangroli. He then states that thereafter at 7.00 AM in the morning dead body of Reena was spotted in the khal near the pacca road. From this learned counsel has made an attempt to demolish the case of the prosecution stating that if aforesaid Raju was accompanying Dil Chand the father of the girl in search of her and had noticed the boy running from the fields of sugarcane, this fact must have appeared in the initial statement made by Dil Chand to the police. This shows that in order to implicate the appellant, the story has been introduced from the mouth of Raju in which the white shirt and green stripped pant worn by appellant is shown. It is a clever move by the prosecution to connect the appellant with the commission of the offence as subsequently the prosecution has shown the recovery of the said clothes from the appellant pursuant to the disclosure statement suffered by him. Therefore, the statement of Raju, according to the learned counsel, deserves to be rejected out rightly.

Mr. Jaswal while drawing our attention to the statement of Dil Chand and his wife Vidya points out certain discrepancies and submits that the same are very material and knock at the bottom of the case.

Mr. Jaswal then submits that medical evidence does not support the case of the prosecution as it is not proved conclusively from the

statement of Dr. Jasmer Singh who had conducted the autopsy on the dead body of the girl that the rape was committed upon the girl. In the same breath Mr. Jaswal submits that may be certain abrasions were found on the person of the appellant but he has tendered a plausible explanation by taking a plea that his wife had made a complaint against him and the police tortured and detained him in the Police Station. Mr. Jaswal wants to develop that on account of addiction to liquor he had become impotent for which he was deserted by his wife and he in fact was not in a position to commit rape. He then states that even the FSL report does not render any advantage to the prosecution.

Mr. Jaswal lastly contends that the prosecution has also not been able to prove conclusively the charge of murder qua appellant as there is no reliable evidence in this regard. According to him, the case of the prosecution is shrouded in suspicion right from the very beginning and the suspicion cannot take the place of proof. He contends that the prosecution has not been able to complete its chain of the circumstantial evidence which should be pointer towards the guilt of the appellant only.

On the basis of the aforesaid submission, Mr. Jaswal prays for acquittal of the appellant qua both the charges.

Controverting the submissions advanced by Mr. Jaswal, Mr. Katyal submits that all the main planks of the circumstantial evidence are proved to the hilt which are pointer towards the appellant only. He

contends that Dil Chand had no animosity against the appellant to falsely implicate him. He is one who had come to the place of Dil Chand, consumed liquor and when Dil Chand fell asleep after consuming liquor he took an undue advantage of the situation, lifted her daughter of the age of hardly 5/6 years and committed rape upon her at a secluded place (sugarcane fields) and thereafter killed her also. According to the learned State counsel, the appellant, thus, has no escape.

The arguments advanced by Mr. Jaswal are not appealing to us. No doubt there is no direct evidence to show the involvement of the appellant for both the charges and the case is hinging upon circumstantial evidence yet in our considered view the prosecution has brought on record definite planks of circumstantial evidence which are pointer towards the guilt of the appellant.

The main circumstance appearing against the appellant is that he had come to the Kotha of Dil Chand the father of the girl and asked for the tumbler for consuming liquor but was refused. The fact remains that ultimately he had consumed the liquor and offered the same to Dil Chand. Dil Chand very fairly admits that he had consumed liquor and fell asleep and retired on the Palli. He was made to wake up only at 2.00 AM when his wife Vidya and Raju came back from another Kotha. We do not find any adulteration in his statement and term it to be pure one.

Statement of Vidya mother of the girl and wife of Dil Chand is

again very convincing. She states that when she noticed that her husband and the appellant were taking liquor, she left the place along with her three children to the Kotha of Raju which was nearby. Leaving her daughter (victim) who was already sleeping on the Palli is not an un-natural conduct as she or even her husband who was consuming liquor along with the appellant could never think of dirty designs of appellant. Vidya then states that she came back at about 2.00 AM (night time) presuming that the appellant might have left the place by then and when she came back with Raju, she noticed that her daughter was missing. Therefore, in our considered view, Dil Chand who approached the police for making the statement had rightly suspected the appellant only.

Mr. Jaswal had made an attempt to take advantage of the statement of Raju who had stated that he had seen one person coming out of the sugarcane fields and wearing a particular dress. But, in our view, this fact does not demolish the case of the prosecution at all. Assuming for the sake of arguments, even if an attempt was made by the prosecution to connect the appellant with the commission of offence by introducing the aforesaid fact from the mouth of Raju, it can be said to be some what over doing by the Investigating Officer but it certainly does not shatter the basic case of the prosecution against the appellant. Even if we exclude the statement of Raju still the case of the prosecution is getting full support from the medical evidence. The post mortem report of the deceased

indicates that not only blood had oozed out from her mouth and nostril, the injuries on her private part made us to believe that she was sexually assaulted. The other injuries which are proved to be fatal have been caused in the same process. Medical evidence of the appellant also speaks volumes of the fact that he is the only person who had committed both the offences. He was taken in custody on 23.6.1996 and when medically examined, Dr. Dahiya PW6 found certain injuries which are indicative of the fact that he had committed rape. May be the appellant is not to be convicted on the basis of his weak defence and the prosecution is supposed to prove its case to the hilt but we cannot resist observing that the plea set up by him is hanging by a tenuous thread. According to the learned counsel, the wife of the appellant had deserted him on the ground that he was impotent and on account of that dispute between wife and husband, the police had implicated him falsely in this case is not at all appealable to the judicial conscience. The defence evidence of Hukam Singh DW1 and Ram DW2 is neither here nor there and has to be rejected being worthy of no credence.

As a sequel to the aforesaid discussion, in our considered view, all the planks of evidence produced by the prosecution are unerringly pointing towards the guilt of the appellant who after taking the undue advantage of the situation lifted a tender-aged child to nearby fields, committed rape upon her and in the same process caused several injuries to

which she succumbed at the spot itself. The net result is that the offences for which the appellant is charged are proved to the hilt to conclude that the appellant is guilty. He, therefore, has no escape from his wolfish act. We, accordingly, confirm the finding of the guilt on both the counts as recorded by the trial court.

The instant appeal is dismissed.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

August 08, 2006
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